

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD J. MCMICHAEL
AND MARK E. FOSTER

Application No. 10/085,637

MAILED

JUN 29 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on April 13, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the file indicates that on September 16, 2004, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 1.192(c). However, the rules under 35 U.S.C. § 1.192(c) were abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c). Accordingly, the Appeal Brief filed on September 16, 2004 does not comply with the new rules under 37 CFR § 41.37(c) which stated in part:

The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section...,

- (i) *Real party in interest.*
- (ii) *Related appeals and interferences.*
- (iii) *Status of claims.*
- (iv) *Status of amendments.*
- (v) *Summary of claimed subject matter.*
- (vi) *Grounds of rejection to be reviewed on appeal.*
- (vii) *Argument.*
- (viii) *Claims appendix.*
- (ix) *Evidence appendix.*
- (x) *Related proceedings appendix.*

A review of the application reveals that the following sections are missing from the Appeal Brief filed September 16, 2004:

- (v) "Summary of claimed subject matter" as set forth in 37 CFR § 41.37(c)(1)(v);
- (vi) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR § 41.37(c)(1)(vi);
- (ix) "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- (X) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

It is required that a substitute Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c).

For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- (1) hold the Appeal Brief filed on September 16, 2005 defective;
- (2) to notify appellants to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;
- (3) for the examiner to consider the substitute Appeal Brief and, if necessary, vacate the Examiner's Answer mailed October 28, 2004 and issue a new Examiner's Answer; and
- (4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:

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